



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB2370

Introduced 1/28/2016, by Sen. Patricia Van Pelt

SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-170
705 ILCS 405/5-401.5
725 ILCS 5/103-2.1

Amends the Juvenile Court of 1987 and the Code of Criminal Procedure of 1963. Provides that a minor who was under 18 at the time of the commission of any offense must be represented by counsel throughout the entire custodial interrogation. An oral, written, or sign language statement of a minor made without counsel present throughout the entire custodial interrogation of the minor shall be inadmissible as evidence in any juvenile court proceeding or criminal proceeding against the minor. Provides that in a proceeding under the Criminal Code of 2012, a minor who was under 18 at the time of the commission of the offense must be represented by counsel throughout the entire custodial interrogation of the minor and an oral, written, or sign language statement made without counsel present shall be inadmissible in any criminal proceeding against the minor.

LRB099 18370 SLF 44404 b

FISCAL NOTE ACT
MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Juvenile Court Act of 1987 is amended by
5 changing Sections 5-170 and 5-401.5 as follows:

6 (705 ILCS 405/5-170)

7 Sec. 5-170. Representation by counsel.

8 (a) In a proceeding under this Article, a minor who was
9 under 18 ~~13~~ years of age at the time of the commission of any
10 offense ~~an act that if committed by an adult would be a~~
11 ~~violation of Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, 9-3.3,~~
12 ~~11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 12-13, 12-14,~~
13 ~~12-14.1, 12-15, or 12-16 of the Criminal Code of 1961 or the~~
14 ~~Criminal Code of 2012~~ must be represented by counsel throughout
15 ~~during~~ the entire custodial interrogation of the minor.

16 (b) In a judicial proceeding under this Article, a minor
17 may not waive the right to the assistance of counsel in his or
18 her defense.

19 (Source: P.A. 96-1551, eff. 7-1-11; 97-1150, eff. 1-25-13.)

20 (705 ILCS 405/5-401.5)

21 Sec. 5-401.5. When statements by minor may be used.

22 (a) In this Section, "custodial interrogation" means any

1 interrogation (i) during which a reasonable person in the
2 subject's position would consider himself or herself to be in
3 custody and (ii) during which a question is asked that is
4 reasonably likely to elicit an incriminating response.

5 In this Section, "electronic recording" includes motion
6 picture, audiotape, videotape, or digital recording.

7 In this Section, "place of detention" means a building or a
8 police station that is a place of operation for a municipal
9 police department or county sheriff department or other law
10 enforcement agency at which persons are or may be held in
11 detention in connection with criminal charges against those
12 persons or allegations that those persons are delinquent
13 minors.

14 (b) An oral, written, or sign language statement of a minor
15 who, at the time of the commission of the offense was under the
16 age of 18 years, made as a result of a custodial interrogation
17 conducted at a police station or other place of detention on or
18 after the effective date of this amendatory Act of the 93rd
19 General Assembly shall be presumed to be inadmissible as
20 evidence against the minor in any criminal proceeding or
21 juvenile court proceeding, for an act that if committed by an
22 adult would be brought under Section 9-1, 9-1.2, 9-2, 9-2.1,
23 9-3, 9-3.2, or 9-3.3, of the Criminal Code of 1961 or the
24 Criminal Code of 2012, or under clause (d)(1)(F) of Section
25 11-501 of the Illinois Vehicle Code unless:

26 (1) an electronic recording is made of the custodial

1 interrogation; and

2 (2) the recording is substantially accurate and not
3 intentionally altered.

4 (b-5) Under the following circumstances, an oral, written,
5 or sign language statement of a minor who, at the time of the
6 commission of the offense was under the age of 17 years, made
7 as a result of a custodial interrogation conducted at a police
8 station or other place of detention shall be presumed to be
9 inadmissible as evidence against the minor, unless an
10 electronic recording is made of the custodial interrogation and
11 the recording is substantially accurate and not intentionally
12 altered:

13 (1) in any criminal proceeding or juvenile court
14 proceeding, for an act that if committed by an adult would
15 be brought under Section 11-1.40 or 20-1.1 of the Criminal
16 Code of 1961 or the Criminal Code of 2012, if the custodial
17 interrogation was conducted on or after June 1, 2014;

18 (2) in any criminal proceeding or juvenile court
19 proceeding, for an act that if committed by an adult would
20 be brought under Section 10-2, 18-4, or 19-6 of the
21 Criminal Code of 1961 or the Criminal Code of 2012, if the
22 custodial interrogation was conducted on or after June 1,
23 2015; and

24 (3) in any criminal proceeding or juvenile court
25 proceeding, for an act that if committed by an adult would
26 be brought under Section 11-1.30 or 18-2 or subsection (e)

1 of Section 12-3.05 of the Criminal Code of 1961 or the
2 Criminal Code of 2012, if the custodial interrogation was
3 conducted on or after June 1, 2016.

4 (b-10) If, during the course of an electronically recorded
5 custodial interrogation conducted under this Section of a minor
6 who, at the time of the commission of the offense was under the
7 age of 17 years, the minor makes a statement that creates a
8 reasonable suspicion to believe the minor has committed an act
9 that if committed by an adult would be an offense other than an
10 offense required to be recorded under subsection (b) or (b-5),
11 the interrogators may, without the minor's consent, continue to
12 record the interrogation as it relates to the other offense
13 notwithstanding any provision of law to the contrary. Any oral,
14 written, or sign language statement of a minor made as a result
15 of an interrogation under this subsection shall be presumed to
16 be inadmissible as evidence against the minor in any criminal
17 proceeding or juvenile court proceeding, unless the recording
18 is substantially accurate and not intentionally altered.

19 (c) Every electronic recording made under this Section must
20 be preserved until such time as the minor's adjudication for
21 any offense relating to the statement is final and all direct
22 and habeas corpus appeals are exhausted, or the prosecution of
23 such offenses is barred by law.

24 (d) If the court finds, by a preponderance of the evidence,
25 that the minor was subjected to a custodial interrogation in
26 violation of this Section, then any statements made by the

1 minor during or following that non-recorded custodial
2 interrogation, even if otherwise in compliance with this
3 Section, are presumed to be inadmissible in any criminal
4 proceeding or juvenile court proceeding against the minor
5 except for the purposes of impeachment.

6 (d-5) An oral, written, or sign language statement of a
7 minor made without counsel present throughout the entire
8 custodial interrogation of the minor shall be inadmissible as
9 evidence against the minor in any juvenile court proceeding or
10 criminal proceeding.

11 (e) Nothing in this Section precludes the admission (i) of
12 a statement made by the minor in open court in any criminal
13 proceeding or juvenile court proceeding, before a grand jury,
14 or at a preliminary hearing, (ii) of a statement made during a
15 custodial interrogation that was not recorded as required by
16 this Section because electronic recording was not feasible,
17 (iii) of a voluntary statement, whether or not the result of a
18 custodial interrogation, that has a bearing on the credibility
19 of the accused as a witness, (iv) of a spontaneous statement
20 that is not made in response to a question, (v) of a statement
21 made after questioning that is routinely asked during the
22 processing of the arrest of the suspect, (vi) of a statement
23 made during a custodial interrogation by a suspect who
24 requests, prior to making the statement, to respond to the
25 interrogator's questions only if an electronic recording is not
26 made of the statement, provided that an electronic recording is

1 made of the statement of agreeing to respond to the
2 interrogator's question, only if a recording is not made of the
3 statement, (vii) of a statement made during a custodial
4 interrogation that is conducted out-of-state, (viii) of a
5 statement given in violation of subsection (b) at a time when
6 the interrogators are unaware that a death has in fact
7 occurred, (ix) of a statement given in violation of subsection
8 (b-5) at a time when the interrogators are unaware of facts and
9 circumstances that would create probable cause to believe that
10 the minor committed an act that if committed by an adult would
11 be an offense required to be recorded under subsection (b-5),
12 or (x) of any other statement that may be admissible under law.
13 The State shall bear the burden of proving, by a preponderance
14 of the evidence, that one of the exceptions described in this
15 subsection (e) is applicable. Nothing in this Section precludes
16 the admission of a statement, otherwise inadmissible under this
17 Section, that is used only for impeachment and not as
18 substantive evidence.

19 (f) The presumption of inadmissibility of a statement made
20 by a suspect at a custodial interrogation at a police station
21 or other place of detention may be overcome by a preponderance
22 of the evidence that the statement was voluntarily given and is
23 reliable, based on the totality of the circumstances.

24 (g) Any electronic recording of any statement made by a
25 minor during a custodial interrogation that is compiled by any
26 law enforcement agency as required by this Section for the

1 purposes of fulfilling the requirements of this Section shall
2 be confidential and exempt from public inspection and copying,
3 as provided under Section 7 of the Freedom of Information Act,
4 and the information shall not be transmitted to anyone except
5 as needed to comply with this Section.

6 (h) A statement, admission, confession, or incriminating
7 information made by or obtained from a minor related to the
8 instant offense, as part of any behavioral health screening,
9 assessment, evaluation, or treatment, whether or not
10 court-ordered, shall not be admissible as evidence against the
11 minor on the issue of guilt only in the instant juvenile court
12 proceeding. The provisions of this subsection (h) are in
13 addition to and do not override any existing statutory and
14 constitutional prohibition on the admission into evidence in
15 delinquency proceedings of information obtained during
16 screening, assessment, or treatment.

17 (i) The changes made to this Section by Public Act 98-61
18 apply to statements of a minor made on or after January 1, 2014
19 (the effective date of Public Act 98-61).

20 (Source: P.A. 97-1150, eff. 1-25-13; 98-61, eff. 1-1-14;
21 98-547, eff. 1-1-14; 98-756, eff. 7-16-14.)

22 Section 10. The Code of Criminal Procedure of 1963 is
23 amended by changing Section 103-2.1 as follows:

24 (725 ILCS 5/103-2.1)

1 Sec. 103-2.1. When statements by accused may be used.

2 (a) In this Section, "custodial interrogation" means any
3 interrogation during which (i) a reasonable person in the
4 subject's position would consider himself or herself to be in
5 custody and (ii) during which a question is asked that is
6 reasonably likely to elicit an incriminating response.

7 In this Section, "place of detention" means a building or a
8 police station that is a place of operation for a municipal
9 police department or county sheriff department or other law
10 enforcement agency, not a courthouse, that is owned or operated
11 by a law enforcement agency at which persons are or may be held
12 in detention in connection with criminal charges against those
13 persons.

14 In this Section, "electronic recording" includes motion
15 picture, audiotape, or videotape, or digital recording.

16 (b) An oral, written, or sign language statement of an
17 accused made as a result of a custodial interrogation conducted
18 at a police station or other place of detention shall be
19 presumed to be inadmissible as evidence against the accused in
20 any criminal proceeding brought under Section 9-1, 9-1.2, 9-2,
21 9-2.1, 9-3, 9-3.2, or 9-3.3 of the Criminal Code of 1961 or the
22 Criminal Code of 2012 or under clause (d)(1)(F) of Section
23 11-501 of the Illinois Vehicle Code unless:

24 (1) an electronic recording is made of the custodial
25 interrogation; and

26 (2) the recording is substantially accurate and not

1 intentionally altered.

2 (b-5) Under the following circumstances, an oral, written,
3 or sign language statement of an accused made as a result of a
4 custodial interrogation conducted at a police station or other
5 place of detention shall be presumed to be inadmissible as
6 evidence against the accused, unless an electronic recording is
7 made of the custodial interrogation and the recording is
8 substantially accurate and not intentionally altered:

9 (1) in any criminal proceeding brought under Section
10 11-1.40 or 20-1.1 of the Criminal Code of 1961 or the
11 Criminal Code of 2012, if the custodial interrogation was
12 conducted on or after June 1, 2014;

13 (2) in any criminal proceeding brought under Section
14 10-2, 18-4, or 19-6 of the Criminal Code of 1961 or the
15 Criminal Code of 2012, if the custodial interrogation was
16 conducted on or after June 1, 2015; and

17 (3) in any criminal proceeding brought under Section
18 11-1.30 or 18-2 or subsection (e) of Section 12-3.05 of the
19 Criminal Code of 1961 or the Criminal Code of 2012, if the
20 custodial interrogation was conducted on or after June 1,
21 2016.

22 (b-10) If, during the course of an electronically recorded
23 custodial interrogation conducted under this Section, the
24 accused makes a statement that creates a reasonable suspicion
25 to believe the accused has committed an offense other than an
26 offense required to be recorded under subsection (b) or (b-5),

1 the interrogators may, without the accused's consent, continue
2 to record the interrogation as it relates to the other offense
3 notwithstanding any provision of law to the contrary. Any oral,
4 written, or sign language statement of an accused made as a
5 result of an interrogation under this subsection shall be
6 presumed to be inadmissible as evidence against the accused in
7 any criminal proceeding, unless the recording is substantially
8 accurate and not intentionally altered.

9 (b-15) In a criminal proceeding brought under the Criminal
10 Code of 2012, a minor who was under 18 years of age at the time
11 of the commission of the offense must be represented by counsel
12 throughout the entire custodial interrogation of the minor.

13 (c) Every electronic recording made under this Section must
14 be preserved until such time as the defendant's conviction for
15 any offense relating to the statement is final and all direct
16 and habeas corpus appeals are exhausted, or the prosecution of
17 such offenses is barred by law.

18 (d) If the court finds, by a preponderance of the evidence,
19 that the defendant was subjected to a custodial interrogation
20 in violation of this Section, then any statements made by the
21 defendant during or following that non-recorded custodial
22 interrogation, even if otherwise in compliance with this
23 Section, are presumed to be inadmissible in any criminal
24 proceeding against the defendant except for the purposes of
25 impeachment.

26 (e) Nothing in this Section precludes the admission (i) of

1 a statement made by the accused in open court at his or her
2 trial, before a grand jury, or at a preliminary hearing, (ii)
3 of a statement made during a custodial interrogation that was
4 not recorded as required by this Section, because electronic
5 recording was not feasible, (iii) of a voluntary statement,
6 whether or not the result of a custodial interrogation, that
7 has a bearing on the credibility of the accused as a witness,
8 (iv) of a spontaneous statement that is not made in response to
9 a question, (v) of a statement made after questioning that is
10 routinely asked during the processing of the arrest of the
11 suspect, (vi) of a statement made during a custodial
12 interrogation by a suspect who requests, prior to making the
13 statement, to respond to the interrogator's questions only if
14 an electronic recording is not made of the statement, provided
15 that an electronic recording is made of the statement of
16 agreeing to respond to the interrogator's question, only if a
17 recording is not made of the statement, (vii) of a statement
18 made during a custodial interrogation that is conducted
19 out-of-state, (viii) of a statement given in violation of
20 subsection (b) at a time when the interrogators are unaware
21 that a death has in fact occurred, (ix) of a statement given in
22 violation of subsection (b-5) at a time when the interrogators
23 are unaware of facts and circumstances that would create
24 probable cause to believe that the accused committed an offense
25 required to be recorded under subsection (b-5), or (x) of any
26 other statement that may be admissible under law. The State

1 shall bear the burden of proving, by a preponderance of the
2 evidence, that one of the exceptions described in this
3 subsection (e) is applicable. Nothing in this Section precludes
4 the admission of a statement, otherwise inadmissible under this
5 Section, that is used only for impeachment and not as
6 substantive evidence.

7 (f) The presumption of inadmissibility of a statement made
8 by a suspect at a custodial interrogation at a police station
9 or other place of detention may be overcome by a preponderance
10 of the evidence that the statement was voluntarily given and is
11 reliable, based on the totality of the circumstances.

12 (g) Any electronic recording of any statement made by an
13 accused during a custodial interrogation that is compiled by
14 any law enforcement agency as required by this Section for the
15 purposes of fulfilling the requirements of this Section shall
16 be confidential and exempt from public inspection and copying,
17 as provided under Section 7 of the Freedom of Information Act,
18 and the information shall not be transmitted to anyone except
19 as needed to comply with this Section.

20 (Source: P.A. 97-1150, eff. 1-25-13; 98-547, eff. 1-1-14.)